

## REMARKS

Claims 1-22, all the claims pending in the application, stand rejected.

### *Claim Rejections - 35 U.S.C. § 102*

Claims 1-22 are rejected under 35 U.S.C. § 102(e) as being anticipated by Yoshitomi et al (6,347,998). This rejection is traversed.

The present invention is an improvement over a game in which a player operates an instrument, e.g., a keyboard, according to instructions provided to the player on a display. The accuracy of the player's operation of an actual keyboard compared to the displayed keyboard is evaluated. However, an experienced player may find such play uninteresting because it does not permit creative performance, such as improvised or ad-lib performance, as described at pages 1 and 2 of the specification. The present invention provides a game system which enables a player to enjoy improvised performance where the performance is "marked-up", i.e., scored, thereby providing a challenge to the experienced player.

The invention focuses on two fundamental components of music composition, namely cord progression and timing, in creating the building blocks for an improvisational piece, as explained at pages 17-23 for a single player and pages 24-28 for multiple players (e.g., for duets). Cord progression data and timing data are stored in tables (Fig. 5 and 6) and represent a standard by which the improvisational play may be judged. As explained at pages 19-20, the improvised music performance is conducted with guidance information that is displayed on the basis of CPU control. The CPU sequentially reads music scale data of musical composition data and sequentially adds guidance marks for 20 to a keyboard display image, as see in Fig. 10. The performance is judged and "marked-up" on the basis of the match between the musical performance data and the plurality of reference cords and/or performance timings. Guidance information may be displayed in a variety of ways including, as shown in Fig. 12, a portion of a musical performance that is to be improvised.

Claims 1-12 and 16-20 are focused on the execution of the game by a single player. Claims 13-15 and 21-22 concern the performance of the game by multiple players. All of the claims are expressly limited to "improvised musical operation which is played with the degree of performance by the player" which is interpreted in accordance with the clear disclosure in the

specification as related to improvisational rather than fully preprogrammed performances. The claims also concern the use of “mark-up” to judge the improvisational performance, some of the claims being limited to musical performance cords and/or timing.

**Yoshitomi et al**

The reference cited by the Examiner has nothing to do with a game that depends upon improvisational musical performances by a player. Further, it has no relationship to a process of marking up an improvised musical performance on the basis of (1) musical cords or (2) timing. In addition, there is no structure of process for generating guidance information for improvised musical performances by a player. Finally, there is no consideration of a comparison between an actual improvised performance and operation instructions, and no consideration of the measure of performance of two or more players.

Because of the absence of these key features in the claims from Yoshitomi et al, there can be no anticipation.

Yoshitomi concerns a game system having a memory device which stores performance data stipulating the manipulation of a controller in accordance with a predetermined musical piece. The data specifies a sequence of “manipulations” (e.g., instrument members that are actuated to created performance) and sounds. In order to make a musical performance game more interesting, an editing function is provided that permits a player to change a manipulation sequence of the input apparatus and to arrange sound effects allocated to the manipulations. The editing device includes an edit screen where note marks may be adjusted corresponding to timing manipulations and the allocation of sound effects. The portion of Yoshitomi et al that has been cited by the Examiner (col. 9, line 15 - col. 10, line 67) describes the manner in which the disclosed game may be played and measured, including for a guitar-embodiment, a fret manipulation, picking manipulation and wailing manipulation. The player’s performance with respect to such manipulations may be judged and scored in a display. However, the musical piece that is performed is totally fixed and predetermined, and is not subject to improvisation during play.

Even the editing process, by which a player may change the procedure of manipulations and the allocation of sound effects to the manipulations as desired, does not involve an

improvisational performance. This is not an “improvised musical operation which is played with a degree of freedom of performance,” as claimed. Moreover, the claims clearly are directed to the mark up of an improvised musical operation as a result of a performance.

### ***Claim Rejections - 35 U.S.C. § 103***

In anticipation of a possible shift in the Examiner’s basis for rejection, Applicants wish to note that the patent to Yoshitomi is commonly owned by the assignee of the present application, Konami Corporation. Applicants further note that the present application has an inventor common to the cited reference, Mr. Kensuke Yoshitomi.

Further, Applicants note that §103(c) of the U.S. Patent statute provides that:

“Subject matter developed by another person which qualifies as prior art only under one or more subsections (e), (f) and (g) of §102 of this title, shall not preclude patentability under this section or the subject matter of the claimed invention were at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.”

This provision which became effective November 29, 1999 for all applications filed after that date, precludes a commonly assigned patent from being prior art under §102(e)/(103). On the basis of this section, the Yoshitomi et al reference would be excluded from use in formulating a rejection against the present application under Section 103. Applicants confirm that the assignee of Yoshitomi et al (Konami Co., Ltd.) is the same entity as the assignee of the present application (Konami Corporation), hereinafter “Konami,” and that the inventors of the present application had a duty to assign the invention to Konami at the time the invention was made. On the basis of this assurance, Yoshitomi et al cannot be used in a §103 rejection.

### ***Claim Amendments***

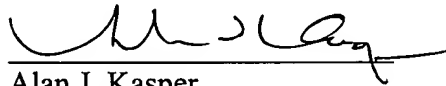
Applicant has made certain additional amendments to the claims in order to clarify the claimed subject matter.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the

Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



Alan J. Kasper  
Registration No. 25,426

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE



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PATENT TRADEMARK OFFICE

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**APPENDIX**  
**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**IN THE CLAIMS:**

**The claims are amended as follows:**

1. (Amended) A game system which enables a player to play a game for evaluating the accuracy of an operation performed when the player has operated an actual performance operation instrument in accordance with an operation instruction given [for] in connection with a displayed image of a performance operation instrument appearing on a game display screen, the game system comprising:

a mark-up processing device which marks up an improvised musical operation which is played with a degree of freedom of performance by the player through use of the actual performance operation instrument in accordance with a performance operation instruction.

3. (Amended) The game system of claim 2, wherein the mark-up processing device effects a mark-up operation such that evaluation of the player is increased every time a match between a progression of the musical performance chords and a progression of a plurality of preset mark-up reference chords is found.

4. (Amended) The game system of claim 3, wherein a progression of the mark-up reference chords is stored [memorized] in a form of a table.

7. (Amended) The game system of claim 6, wherein the mark-up reference timings are stored [memorized] in a form of a table.

8. (Amended) The game system of claim 1, wherein the mark-up processing device marks up the improvised musical performance on the basis of at least one of a progression of musical performance chords and a musical performance timing of the improvised musical performance of the player.

13. (Amended) A game system which enables a plurality of players to play a game for evaluating the accuracy of operations performed when the players have operated actual performance operation instruments in accordance with operation instructions given [for] in connection with a displayed image of a performance operation instrument appearing on a game display screen, the game system comprising:

a mark-up processing device which marks up an improvised duet musical operation, said duet musical operation being playable [which is played] with a degree of freedom of performance by the players through use of the actual performance operation instruments in accordance with performance operation instruction.

16. (Amended) A computer readable medium having recorded thereon a processing program to be used for controlling operation of a game system which enables a player to play a game for evaluating the accuracy of an operation performed when the player has operated an actual performance operation instrument in accordance with an operation instruction given [for] in connection with a display image of a performance operation instrument appearing on a game display screen, the processing program comprising:

a mark-up processing routine for controlling a processor to mark up [marking up] an improvised musical operation which is played with a degree of freedom of performance by the player through use of the actual performance operation instrument in accordance with a performance operation instruction.

21. (Amended) A computer readable medium having recorded thereon a processing program to be used for controlling the operation of a game system which enables a plurality of players to play a game for evaluating the accuracy of operations performed when the players have operated actual performance operation instruments in accordance with operation instructions given [for] in connection with a display image of a performance operation instrument appearing on a game display screen, the processing program comprising:

a mark-up processing routine for controlling a processor to mark up [marking up] an improvised duet musical operation which is played with a degree of freedom of performance by the players through use of the actual performance operation instruments in accordance with performance operation instruction.